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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,073	06/21/2006	Frederick Micheal Miniter	22216-00012-US1	8055
30678	7590	09/29/2009	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ LLP			PLUMMER, ELIZABETH A	
1875 EYE STREET, N.W.				
SUITE 1100			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20006			3635	
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			09/29/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/568,073	MINITER, FREDERICK MICHEAL	
	<b>Examiner</b>	<b>Art Unit</b>	
	ELIZABETH A. PLUMMER	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 13 December 2006.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-29 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-29 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

Preliminary amendments to the specification received 02/13/2006 have been received and entered. Claims 1-29 are pending. This is a first Office action on the merits for application serial number 10/568,073 filed 02/13/2006.

### ***Information Disclosure Statement***

The listing of references in the Search Report is not considered to be an information disclosure statement (IDS) complying with 37 CFR 1.98. 37 CFR 1.98(a)(2) requires a legible copy of: (1) each foreign patent; (2) each publication or that portion which caused it to be listed; (3) for each cited pending U.S. application, the application specification including claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion, unless the cited pending U.S. application is stored in the Image File Wrapper (IFW) system; and (4) all other information, or that portion which caused it to be listed. In addition, each IDS must include a list of all patents, publications, applications, or other information submitted for consideration by the Office (see 37 CFR 1.98(a)(1) and (b)), and MPEP § 609.04(a), subsection I. states, "the list ... must be submitted on a separate paper." Therefore, the references cited in the Search Report have not been considered. Applicant is advised that the date of submission of any item of information or any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the IDS, including all "statement" requirements of 37 CFR 1.97(e). See MPEP § 609.05(a).

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

***Claim Objections***

1. Claims 1-20 are objected to because of the following informalities: Regarding claim 1, claim 1 appears to contain a typographical error. It is assumed that the phrase "with extends" in line 5 is intended to read "which extends". Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, and 16-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor (US Patent 4,745,720) in view of Annestad (US Patent 6,248,433).

a. Regarding claims 1 and 28, Taylor discloses a thermally insulating wall construction comprising a pair of masonry panels (1,2) each having an internal surface and an observable surface and being arranged with said internal

surfaces facing each other to define an air cavity between said panels (Fig. 1,6,8,9), said internal surface each having a plurality of recesses interspersed between protrusion (Fig. 1,6,8,9), and said wall construction having at least one sheet which extends between adjacent protrusions (Fig. 8,9,10). Taylor does not disclose that the at least sheet is a reflective sheet. However, it is well known in the art that sheets used in masonry panels for insulation can be reflective sheets. For example, Annestad teaches a reflective sheet (column 2, lines 28-45; column 2, lines 52-56; column 3, lines 16-20; column 5, lines 16-27) in order to create a better insulation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the insulation with a reflective sheet, such as taught by Annestad, in order to make the wall construction more thermally insulating.

- b. Regarding claim 2, the recesses and protrusions of one of said internal surface are arranged opposite of the recesses and protrusions of the other internal surface.
- c. Regarding claim 3, Taylor in view of Annestad discloses the invention as claimed except for a single substantially centrally located sheet intermediate said pair of panels. However, it is would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Taylor in view of Annestad to use one single sheet instead of multiple sheets centrally located intermediate said pair of panels (Fig. 9), as it would have been a matter of obvious design choice to make the multiple parts integral.

- c. Regarding claim 4, a pair of sheets extends between adjacent protrusions of the corresponding panel, each of which is spaced from the interior of said corresponding recesses (Fig. 9).
- d. Regarding claim 5, the pair of sheets can at least partially enter the recesses of the corresponding panel (column 3, lines 6-11 – the grooved insulation would be so thick that it would inherently extend into the recesses).
- e. Regarding claim 6, the recesses and protrusions respectively comprise a series of substantially parallel grooves and ridges (Fig. 9).
- f. Regarding claim 7, the grooves are substantially semi-circular in transverse cross section and said ridges have substantially flat and co-planar crests (Fig. 9).
- g. Regarding claim 8, strips of resilient cellular insulation material are positioned extending at least partially along said crests (Fig. 9,10).
- h. Regarding claim 9, said strips are interposed between corresponding protrusions of said internal surfaces (Fig. 9,10).
- i. Regarding claim 10, said strips are dimensioned to comprise a shock absorbing packing between said pair of masonry panels which, but for said strips, would otherwise have said corresponding protrusions substantially abutting (Fig. 10).
- j. Regarding claims 11 and 12, Taylor in view of Annestad disclose that the panels are formed by a former (column 48-68). While Taylor in view of Annestad do not disclose that the former is left in place and retained in the panel, it would

have been a matter of obvious design choice to use the notoriously well of leaving a former in situ in order to reinforce the panel. Furthermore, it would have been a matter of obvious design choice to form the former as any shape, as such a modification would have involved a mere change in shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1966).

- k. Regarding claim 13, a plurality of said panels are edge abutted in side-by-side relationship (Fig. 5,10).
- l. Regarding claim 16, the panels are provided with interior grooves each inherently defining part of a recess for a stud (Fig. 9).
- m. Regarding claim 17, while Taylor in view of Annestad are silent as to whether studs are spanned by a beam capable of supporting floor joists of an upper story, the structure of Taylor in view of Annestad is inherently capable of being spanned by a beam capable of supporting floor joists of an upper story. It also would have been a matter of obvious design choice to actually incorporate the beam for floor joists, as multiple storied buildings are notoriously well known in the art.
- m. Regarding claim 18, Annestad further teaches the reflective sheet comprises double sided aluminum coated plastics film (column 5, lines 35-44).
- n. Regarding claim 19, said recesses are at least partially filled with an acoustic insulation (column 5, lines 35-44).
- o. Regarding claim 20, the insulation is fibrous (Fig. 9).

p. Regarding claims 21-27, claims 21-27 are rejected as the obvious method of fabricating the panel of claim 1. Furthermore, Taylor explicitly discloses creating a mould for the panel, placing a shaped formed in the mould to form said recesses and protrusions, pouring a flowable hardenable cementitious substance onto said former within said mould and allowing same to set, and removing said set material and formed from said mould (column 3, 48-59). While Taylor in view of Annestad do not disclose that the former is left in place and retained in the panel, it would have been a matter of obvious design choice to use the notoriously well of leaving a former in situ in order to reinforce the panel. Furthermore, it would have been a matter of obvious design choice to form the former as any shape, as such a modification would have involved a mere change in shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1966).

q. Regarding claim 29, the blocks are used to form a building including a wall construction (Fig. 5).

4. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor (US Patent 4,745,720) in view of Annestad (US Patent 6,248,433), as applied to claim 13 above, and further in view of Georges et al. (FR 2651816 A). Regarding claim 14, while Taylor in view of Annestad discloses the invention as claimed except for the edge abutments of the panels on side of said cavity not aligned with the edge abutments of the panels on the other side of said cavity. However, it is well known in the art that

panels do not have to have their edges in alignment. For example, Georges et al. teaches the edge abutments of the panels on side of said cavity not aligned with the edge abutments of the panels on the other side of said cavity (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Taylor in view of Annestad to stagger the panels such that the edge abutments of the panels on side of said cavity not aligned with the edge abutments of the panels on the other side of said cavity, such as taught by Georges et al., in order to make the wall stronger.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor (US Patent 4,745,720) in view of Annestad (US Patent 6,248,433), as applied to claim 13 above, and further in view of Batch (US Publication 2002/0017070). Regarding claim 14, while Taylor in view of Annestad do not disclose that the edge abutment is defined by a tongue on one edge of each panel and a corresponding groove on the other edge of each panel, tongue and groove connections are notoriously well known in the art. For example, Batch teaches an edge abutment defined by a tongue on one edge of each panel and a corresponding groove on the other edge of each panel (Fig. 1,2,4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Taylor in view of Annestad to use an edge abutment defined by a tongue on one edge of each panel and a corresponding groove on the other edge of each panel, such as taught by Batch, in order to make the panels more strongly connect together.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH A. PLUMMER whose telephone number is (571)272-2246. The examiner can normally be reached on Monday through Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeanette E Chapman/  
Primary Examiner, Art Unit 3633

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/E. A. P./  
Examiner, Art Unit 3635